

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

The Philadelphia Coca-Cola Bottling Company
725 East Erie Avenue
Philadelphia, Pennsylvania 19134

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

International Brotherhood of Teamsters, Local No. 830
12298 Townsend Road
Philadelphia, Pennsylvania 19154

County of Residence of First Listed PHILADELPHIA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael G. Tierce, Esquire
Schnader Harrison Segal & Lewis, LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103 (215) 751-2000

Attorneys (If Known)

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FILED
JUN - 7 2002

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff x 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 DEF ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Administrative Action <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- x 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

PURSUANT TO THE LABOR MANAGEMENT RELATIONS ACT TO VACATE A LABOR ARBITRATION AWARD

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

**IN THE UNITED STATES DISTRICT COURT APPENDIX C
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

The Philadelphia Coca-Cola
Bottling Company

CIVIL ACTION

v.

The International Brotherhood of
Teamsters, Local No. 830

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (4)

6/7/02
Date

Mike Tierce
Attorney-at-law

Plaintiff
Attorney for
~~Plaintiff~~
Plaintiff

WY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PHILADELPHIA COCA-COLA
BOTTLING COMPANY,

Petitioner,

v.

UNITED BROTHERHOOD OF TEAMSTERS
LOCAL NO. 830

Respondent.

C.A. NO. 02-cv-3664

FILED JUN - 7 2002

COMPLAINT

I. INTRODUCTION

This is an action pursuant to Section 301 of the Labor Management Relations Act 29 U.S.C. § 141 *et seq.* ("LMRA") in which Plaintiff, The Philadelphia Coca-Cola Bottling Company ("Plaintiff" or "Philadelphia Coca-Cola"), seeks to vacate an arbitration award. The award pertains to a labor dispute between The Philadelphia Coca-Cola Bottling Company and United Brotherhood of Teamsters Local No. 830 ("Defendant" or "Local 830").

II. PARTIES

1. Plaintiff is corporation organized under the laws of the state of Delaware with its principal place of business at 725 East Erie Avenue, Philadelphia, Pennsylvania. Philadelphia Coca-Cola is an independent bottler and distributor of Coca-Cola products; has

facilities located across the tri-state area; and, is in an industry affecting commerce within the meaning of the LMRA.

2. Defendant Local 830 is a labor organization within the meaning of the LMRA with its principal place of business at 12298 Townsend Road, Philadelphia, Pennsylvania.

3. Philadelphia Coca-Cola maintains a facility at 725 East Erie Avenue, Philadelphia, Pennsylvania 19134. Local 830 represents employees at this facilities.

III. JURISDICTION & VENUE

4. The jurisdiction of this Court is invoked pursuant to Section 301 of the LMRA in that this is a suit for a violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce.

5. Venue is proper in this district pursuant to 29 U.S.C. § 185(a) and 28 U.S.C. § 1391(b) because duly authorized agents of Local 830 are engaged in representing or acting on behalf of its members in the Eastern District of Pennsylvania and because the events giving rise to the claim occurred in this District.

IV. FACTS

6. Philadelphia Coca-Cola and Local 830 are parties to a collective bargaining agreement, which sets forth the terms and conditions of employment for Local 830 members who are employed by Philadelphia Coca-Cola at its Erie Avenue facility.

7. The collective bargaining agreement between Philadelphia Coca-Cola and Local 830 covers the time period from April 15, 2000 through April 14, 2004 and it is in full force and effect according to its terms. (See Exhibit A attached hereto).

8. Article XXI of the collective bargaining agreement contains a mandatory grievance and arbitration procedure.

9. Article XXI of the contract provides:

GRIEVANCE -- ARBITRATION

- a. In the event of a grievance or dispute arising under the terms of this Agreement, the UNION steward shall take the matter up with the EMPLOYER's representative, and every reasonable effort shall be made to reach a satisfactory solution. If no satisfactory solution can be reached, the Business Agent or other duly authorized representative of the UNION shall be notified by the UNION steward within five (5) working days of the event complained of, and the Business Agent or the duly authorized representative of the UNION shall take the matter up with the EMPLOYER within five (5) working days after the occurrence of the event complained of. If the Business Agent of the UNION and the EMPLOYER cannot reach a satisfactory agreement, the matter shall be submitted to arbitration pursuant to the American Arbitration Association's Labor Arbitration Rules.
- b. The decision of the arbitrator shall be final and binding. No arbitrator shall have the power to add to or subtract from the terms of this Agreement. The parties agree to expedite such arbitration.

- c. The fee of the impartial arbitrator and the other costs of arbitration shall be borne equally by the UNION and the EMPLOYER.
- d. It is expressly understood and agreed that any request for arbitration of a discharge of any employee must be made in writing by an official of the UNION to the EMPLOYER within fifteen (15) working days from the date of the discharge or it shall not be subject to arbitration. Upon a timely request for arbitration of a discharge, such arbitration shall be expedited pursuant to the procedures to be agreed upon by the EMPLOYER and the UNION.
- e. In the case of any arbitration of a discharge, the arbitrator may sustain the discharge, or may order the reinstatement of the employee, and in the latter event may order the EMPLOYER to reimburse the employee with pay for days lost. As both parties pledge themselves to handle discharge cases promptly, it is agreed that in the event the arbitrator directs reinstatement of a discharged employee, no more than one hundred-twenty (120) days' lost pay shall be granted. In the event a case is not decided within 120 work days from the date of submission to the American Arbitration Association due to delay proven to be caused by the EMPLOYER, back pay (if awarded) shall run until the date of decision.

10. On January 26, 2001, Joseph Brock, President of Local 830, filed a grievance and demand for arbitration challenging the manner in which Philadelphia Coca-Cola had been applying its policy governing leave under the Family and Medical Leave Act of 1993 ("FMLA").

11. In the grievance, Local 830 alleged that Philadelphia Coca-Cola's FMLA policy, which compels employees to use paid time concurrently with FMLA leave, violates the vacation selection provision of the labor contract, which prohibits changes in vacation selection.

12. On March 1, 2001, the Union filed an unfair labor practice charge at the National Labor Relations Board ("Board") claiming that Philadelphia Coca-Cola "unilaterally altered its vacation policy to require employees to use vacation and other accumulated time while on leave under the FMLA."

13. By letter dated June 22, 2001, the Board deferred the charge pending the outcome of the grievance arbitration in accordance with the principles set forth in *Collyer Insulated Wire, A Gulf and Western Sys. Co.*, 192 NLRB 837, and *United Technologies Corp.*, 268 NLRB 557.

14. The parties selected Arbitrator Walter DeTreuX, Esquire, a member of the American Arbitration Association ("AAA"), as their neutral Arbitrator.

15. The AAA provides a forum for the resolution of disputes. That forum is administered according to procedures set forth in the AAA Rules and Procedures.

16. Arbitrator DeTreuX is a member of AAA and is thus subject to its rules.

17. On or about October 23, 2001, the parties attended a hearing before Arbitrator DeTreuX. The parties attended a second hearing on January 25, 2002. Both parties presented witness testimony and documentary evidence at the hearings.

18. During the hearings, the Philadelphia Coca-Cola offered substantial evidence demonstrating that the grievance was untimely under Article XXI(a), and, therefore, due to this fatal procedural flaw, the Arbitrator need not reach its merits.

19. The parties submitted their post hearing briefs on April 2, 2002.

20. The Arbitrator issued his Memorandum and Decision on May 7, 2002. The Arbitrator sustained the grievance in its entirety, in part finding that the grievance was not untimely. (See Exhibit B attached hereto).

21. The Arbitrator's decision is clearly wrong on this point. In the decision, the Arbitrator found that the grievance in this case was "constructively" filed on August 9, 2000. The Arbitrator also found that the Company's FMLA policy was effective as of June 2000. Article XXI requires the Union to file a grievance within five (5) working days. Therefore, the Arbitrator's own decision demonstrates that the grievance was untimely, and that he should not have reached its merits.

22. The Arbitrator exceeded his authority and his decision has resulted in the deprivation of a fundamentally fair hearing for Philadelphia Coca-Cola, causing the rendition of an unjust, inequitable and/or unconscionable award in violation of the LMRA.

23. The Arbitrator exceeded his power and his decision is wrong as it does not draw its essence from the labor contract causing the rendition of an unjust, inequitable and/or unconscionable award in violation of the LMRA.


24. The Arbitrator exceeded his power and his decision is wrong as it is procedurally defective causing the rendition of an unjust, inequitable and/or unconscionable award in violation of the LMRA.

25. The Arbitrator exceeded his power and his decision is wrong as the Arbitrator made an error in fact causing the rendition of an unjust, inequitable and/or unconscionable award in violation of the LMRA.

V. **PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully demands that judgment be entered herein vacating the award of the Arbitrator and awarding plaintiff's costs, disbursements and fees, and for such other relief as the Court may deem just, proper and equitable.

Respectfully submitted,



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Of Counsel.